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agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory, and any employee of the Department) desiring to complain of any violation of any provision of the Act by any commission merchant, dealer, or broker may file with the Deputy Administrator an informal complaint. Informal complaints may be made the basis of either a disciplinary complaint, or a claim for damages, or both. If the informal complaint is to be made the basis of a claim for damages, it must be received by the Deputy Administrator within 9 months after the cause of action accrues; if the informal complaint is not to be made the basis of a claim for damages, it may be filed at any time within 2 years after the violation of the act occurred: *Provided*, That the 2-year limitation herein prescribed shall not apply to complaints charging flagrant or repeated violations of the act.

(2) Informal complaints may be made in writing by telegram, by letter, or by facsimile transmission, setting forth the essential details of the transaction complained of. So far as practicable, every such informal complaint shall state such of the following items as may be applicable:

(i) The name and address of each person and of the agent, if any, representing him in the transaction involved;

(ii) Quantity and quality or grade of each kind of produce shipped;

(iii) Date of shipment;

(iv) Carrier identification;

(v) Shipping and destination points;

(vi) If a sale, the date, sale price, and amount actually received;

(vii) If a consignment, the date, reported proceeds, gross and net;

(viii) Amount of damages claimed, if any; and

(ix) Statement of other material facts including terms of contract.

(3) The informal complaint should, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accounts sales, and any special contracts or agreements.

(4) The informal complaint shall be accompanied by a filing fee of \$60 as required by the Act.

(b) *Investigations and disposition of informal complaints.* (1) Upon receipt of all the information and supporting evidence submitted by the person filing the informal complaint, the Deputy Administrator shall cause such investigation to be made as, in the Deputy Administrator's opinion, is justified by the facts. If such investigation discloses that no violation of the Act has occurred, no further action shall be taken and the person filing the informal complaint shall be so informed.

(2) If the statements in the informal complaint and the investigation thereunder seem to warrant such action, and, in any case except one of wilfulness or one in which public health, interest or safety otherwise requires, which may result in the suspension or revocation of a license, the Deputy Administrator, in an effort to effect an amicable or informal adjustment of the matter, shall give written notice to the person complained against of the facts or conduct concerning which complaint is made, and shall afford such person an opportunity, within a reasonable time fixed by the Deputy Administrator, to demonstrate or achieve compliance with the applicable requirements of the Act and regulations promulgated thereunder.

[10 FR 2211, Feb. 27, 1945, as amended at 12 FR 1025, Feb. 13, 1947; 56 FR 174, Jan. 3, 1991; 60 FR 8459, Feb. 14, 1995; 64 FR 38106, July 15, 1999]

§ 47.4 Service and proof of service.

(a) *Who shall make service.* Copies of all documents or papers required or authorized by the rules in this part to be filed with the Fruit and Vegetable Programs shall be served on the parties by the Fruit and Vegetable Programs, and copies of all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be served on the parties by the Hearing Clerk, unless any such document or paper is served by some other employee of the Department, or by a U.S. Marshal or deputy marshal, or as

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otherwise provided herein, or as otherwise directed by the presiding officer or Judicial Officer.

(b) *Service on Party.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, a final order, or other document specifically ordered by the presiding officer or Judicial Officer to be served by certified or registered mail, or commercial or private mail delivery service, shall be deemed to be received by any party to a proceeding on the date of delivery by certified or registered mail, or commercial or private mail delivery service to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, last known residence of such party if an individual: Provided, That, if any such document or paper is sent by certified, registered, commercial, or private mail, but is returned, it shall be deemed to be received by such party on the date of the re-mailing by ordinary mail to the same address.

(2) Any document or paper, other than one specified in paragraph (b)(1) of this section or written questions for a deposition as provided in § 47.16(d)(2), shall be deemed to be received by any party to a proceeding on the date of mailing by ordinary mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual.

(3) Any document or paper served other than by certified, registered, commercial, or private mail on any party to a proceeding shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member

of such party if a partnership, at any location.

(c) *Service on another.* Any subpoena or other document or paper served on any person other than a party to a proceeding shall be deemed to be received by such person on the date of:

(1) Delivery by certified, registered, commercial, private or mail to the last known principal address of such person, last known principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

(2) Delivery other than by mail to any responsible individual at, or leaving in a conspicuous place at, any such location; or

(3) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(d) *Proof of service.* Any of the following, in the possession of the Department, showing such service, shall be deemed to be accurate:

(1) A certified or registered mail receipt returned by the postal service with a signature, or a signed receipt returned by a private or commercial mail delivery service;

(2) An official record of the postal service;

(3) An entry on a docket record or a copy placed in a docket filed by the Hearing Clerk of the Department or by an employee of the Hearing Clerk in the ordinary course of business;

(4) A certificate of service, which need not be separate from and may be incorporated in the document or paper of which it certifies service, showing the method, place and date of service in writing and signed by an individual with personal knowledge thereof, *Provided*, That such certificate must be verified by oath or declaration under penalty of perjury if the individual certifying service is not a party to the proceeding in which such document or paper is served, an attorney or representative of record for such a party, or an official or employee of the United

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States or of a State or political subdivision thereof.

[56 FR 174, Jan. 3, 1991; 56 FR 5151, Feb. 8, 1991, as amended at 60 FR 8459, Feb. 14, 1995; 64 FR 38106, July 15, 1999]

§ 47.5 Scope and applicability of rules of practice.

Sections 47.6 through 47.25 shall be applicable to the procedure governing the filing and disposition of formal complaints in reparation proceedings. Sections 47.47 through 47.68 shall be applicable to the proceedings for determining whether a person is responsibly connected with a licensee under the Perishable Agricultural Commodities Act. Sections 47.1 through 47.5 and § 47.46 shall be applicable to all proceedings under §§ 47.6 through 47.25. Sections 47.1 and 47.2, except for § 47.2 (i) through (r), shall be applicable to all proceedings under §§ 47.47 through 47.68. In addition, except to the extent that they are inconsistent with §§ 1.130 through 1.151 of this chapter, §§ 47.1 through 47.5 and 47.46 are also applicable to procedures governing the filing and disposition of formal complaints and other moving papers relating to administrative proceedings to enforce the Act pursuant to §§ 1.130 through 1.151 of this chapter.

[43 FR 30787, July 18, 1978, as amended at 60 FR 8459, Feb. 14, 1995]

RULES APPLICABLE TO REPARATION PROCEEDINGS

§ 47.6 Formal complaints.

(a) *Filing; contents; number of copies.*
(1) If the procedure provided in § 47.3(b) fails to effect an amicable or informal settlement, the person who filed the informal complaint may, if further proceedings are desired, file a formal complaint with the Fruit and Vegetable Programs. The formal complaint shall be filed within ninety days of notification of the opportunity to proceed formally. Failure to file a formal reparation complaint within the time prescribed shall result in the waiver of further proceedings on the claim alleged in the informal complaint.

(2) The formal complaint shall set forth the information and be accompanied by the papers indicated in § 47.3(a)(2) and (3), including a state-

ment of the amount of damages claimed, with the basis therefor, and the method of determination. The original and three copies shall be furnished for filing, and service on the respondent. If there is more than one respondent, a further copy shall be furnished for each additional respondent.

(b) *Bond Required if Complainant is Nonresident.* If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail, and of any reparation award that may be issued by the Secretary against the complainant on any counterclaim asserted by respondent: *Provided*, That the furnishing of a bond may be waived at the discretion of the Secretary if the complainant is a resident of a country which permits the filing of a complaint in an administrative forum or its equivalent which is substantially similar to that provided under the Perishable Agricultural Commodities Act by a resident of the United States against a citizen of that country without the furnishing of a bond. Nothing in this section shall limit the discretion of the Secretary to deny such a waiver in order to effectuate the purposes of the Act or to protect the interests of the businesses concerned.

(c) *Service upon respondent; proof of service.* Upon receipt by the Fruit and Vegetable Programs of the formal complaint, the accompanying papers and the \$300 handling fee required by the Act, a copy thereof shall be served by the Fruit and Vegetable Programs upon the respondent in accordance with § 47.4. If the complaint is not in the proper form, the Fruit and Vegetable Programs shall return it and inform the complainant of the deficiencies therein.